

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERNICE BARKSDALE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 02-4397
	:	
KHL MARKET SQUARE, L.P. &	:	
U.S. POSTAL SERVICE,	:	
	:	
Defendants.	:	

NOTICE OF REMOVAL OF CIVIL ACTION FROM  
STATE COURT TO THE UNITED STATES DISTRICT COURT

Pursuant to 28 U.S.C. §§ 1441 and 1442, the United States of America, on behalf defendant U.S. Postal Service, removes this action to the United States District Court for the Eastern District of Pennsylvania. In support thereof, the United States of America avers the following:

1. Plaintiff Bernice Barksdale filed a Summons and Complaint in the Philadelphia County Court of Common Pleas on March 22, 2002. See Copy of the Complaint attached hereto as Exhibit "A".
2. Plaintiff alleged that defendant KHL Market Square, L.P., was negligent and careless with respect to the maintenance of the sidewalk in front of 7728 Crittendon Street, Philadelphia, Pennsylvania, a property allegedly owned, controlled and possessed by defendant KHL Market Square. The plaintiff also alleged that defendant KHL Market Square failed to

warn plaintiff and others similarly situated of the dangerous condition on the sidewalk.

3. The United States Postal Service leases 7728 Crittendon Street, which is the location of the Market Square Post Office, from defendant KHL Market Square.

4. On June 12, 2002, the United States Attorney's Office for the Eastern District of Pennsylvania was served with a Joinder Complaint by defendant KHL Market Square alleging that should KHL Market Square be found liable for negligence and carelessness with respect to the sidewalk condition at 7728 Crittendon Street, the United States is also liable under the doctrines of joint and several liability and by way of contribution and indemnification. See Copy of the Complaint attached hereto as Exhibit "B".

5. Because this action against the United States sounds in tort, it is governed by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.

6. The United States seeks removal of this action for the following reasons:

a. Under 28 U.S.C. § 1441(a), any action for which the United States has original jurisdiction may be removed by the United States to the United States district court in the district where the action is pending. In this instance, a tort action against the United States is within the original jurisdiction of the district courts. See 28 U.S.C. § 1346(b)(1).

b. Further, under 28 U.S.C. § 1441(b), the United States district courts also have original jurisdiction over any civil action founded on a claim or right arising under federal law and, therefore, defendant's joinder claim under the Federal Tort Claims Act can be removed to the United States district court.

c. Lastly, any claim against a federal agency brought in state court may be removed to district court under 28 U.S.C. § 1442(a)(1).

7. A Notice of Filing of Removal is being filed with the Prothonotary of the Court of Common Pleas for the Philadelphia County, Pennsylvania pursuant to 28 U.S.C. § 1446(d).

8. No bond is required to accompany this Notice as it is filed on behalf of the United States of America.

9. This Notice of Removal is signed pursuant to  
Rule 11 of the Federal Rules of Civil Procedure.

Respectfully submitted,

PATRICK L. MEEHAN  
United States Attorney

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JAMES G. SHEEHAN  
Assistant United States Attorney  
Chief, Civil Division

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VIRGINIA R. POWEL  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Filing of Removal and Notice of Removal have been served by first class mail, postage prepaid, upon the following:

Dale G. Larrimore, Esquire  
Deutsch, Larrimore & Farnish, P.C.  
Suite 500  
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Philadelphia, PA 19103

Brian M. Marriott, Esquire  
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VIRGINIA R. POWEL  
Assistant United States Attorney

DATED: JULY 2, 2002